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Before the

United States House of Representatives
Committee on the Judiciary

A Roundtable Forum on "The Impact of Competition in the Telecommunications Industry"

Hosted by The Honorable John Conyers, Jr.
Ranking Member of the House Judiciary Committee

Attended by the Honorable F. James Sensenbrenner
Chairman, House Judiciary Committee

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Thank you for the opportunity to participate in this roundtable. My name is Peter Healy, and I am Manager for CLEC external relations for TDS Metrocom.

TDS Metrocom is a part of Telephone and Data Systems, the parent company of two vibrant telecommunications companies. United States Cellular is a major regional mobile telephone service provider with over 3 million customers. TDS Telecom and its competitive subsidiaries TDS Metrocom and US Link provide wireline telecommunications to over 1 Million access lines in 29 states.

TDS Telecom has over 700,000 lines in its incumbent territories, while Metrocom and Link serve more than 300,000 competitive lines in North Dakota, Minnesota, Illinois, Wisconsin and Michigan.

TDS Metrocom exemplifies the goals of the Telecom Act of 1996. The TDS Telecom ILEC operating companies have been providing high quality, affordable telecommunications services to rural communities for well over 30 years. Championing the economic development of these communities is an integral part of our corporate mission. When the 1996 Act opened local markets to competition, TDS Metrocom drew upon decades worth of knowledge and experience to bring competitive alternatives to small and medium-sized communities outside of our

affiliates' ILEC footprint. TDS Metrocom and the other TDS Telecom CLEC operating companies are market-savvy competitors with solid business plans, serving both residential and business customers. TDS Metrocom is an active member of the Association of Local Telecommunications Services (ALTS) in Washington, DC where we currently hold leadership positions on several policy and legislative committees within the CLEC advocacy organization.

Our CLEC operations are in 5 states, competing primarily with SBC-Ameritech and Qwest, and generally serving cities with between 10,000 and 100,000 in population. We are a facilities based carrier with 8 switches installed and operating, in excess of 100 collocations and hundreds of miles of our own fiber deployed.

We provide DSL service to over 11,000 customers, and in fact we are the largest DSL provider in Wisconsin, serving more customers than SBC. TDS Metrocom does not use the UNE-Platform and serves customers over UNE-Loops, and where appropriate by placing customers directly on-net.

While I am here as a representative of TDS Metrocom and personally work primarily on behalf of our competitive carriers, we bring this unique perspective as both a wireless and wireline company, both an incumbent and competitive carrier to our business decisions every day and thus to the question of "The impact of Competition on the Telecommunications Industry."

The first thing we need to do, somewhat like a parent sitting down to have that

"birds and bees" talk with a child, is get over being squeamish about calling things by their proper names.

First of all, the RBOCs are monopolies. They still serve more than 88% of the access lines within their territories. Note that although the RBOCs like to talk in terms of *retail* market share "lost" to competition, when you combine retail market share with wholesale market share in terms of CLEC customers served over RBOC loops, RBOCs are right back to virtually 100% market share again.

In short, nearly every customer connected, and nearly every call completed within an RBOC's territory passes over RBOC owned and controlled loops, and results in a revenue stream for the RBOC. Secondly, RBOCs possess market power. If left to their own devices, they would exercise that power in a predatory fashion to eliminate competition and charge monopoly pricing.

If one's only goal is to maximize profits, being a monopoly is a good way to do that, from a purely economic perspective. Being an unregulated monopoly is even better.

Calling the RBOCs monopolies is not pejorative; it is merely calling something by its correct name. We are all going to get a lot further in this discussion if we just accept that simple fact.

The RBOCs imply that because there are CLECs in the market, that presence, in and of itself, proves that the market is open. It simply is not true. Just because an

RBOC has implemented an Operating Support System (OSS) of some sort to collaborate with competitors, this does not mean that this OSS system is creating or fostering competition.

Unless and until the RBOCs are required to behave like true wholesale vendors, to the extent competition has gained a precarious toe-hold, it is most likely that this toe-hold has been gained IN SPITE OF, NOT BECAUSE OF, the efforts of the RBOCs.

Attorney Donald Flexner, arguing on behalf of SBC Communications in the recent Microsoft anti-trust litigation, used an extremely striking phrase to describe "*the most successful monopolists, which are able to kill each nascent threat before it can leave the crib*". Mr. Flexner further argued: "*If you have a situation where a proven monopolist is time and time again able to reach out and, to use the words of the court of appeals, extinguish, perhaps forever, the threats to the . . . monopoly in this case or other monopolies in other cases, it means that the especially rapacious and especially successful monopolist will consistently be immune from remedies that are effective to dissipate market power, and to remove incentive and the ability to engage in predation.*" SBC further stated in its brief filed in that case: "*unless and until these embryonic paradigms can grow into full fledged competitors, Microsoft will enjoy the economic rewards of its monopoly power for several years, bilking consumers during that period (i.e. the present)*

with high prices or using its monopoly power to degrade service or raise rivals' costs."

In short, SBC's attorney accused Microsoft of pointing to the existence of a small amount of competition to justify relaxing regulation of its monopoly, but then using that new found freedom to crush the very competitors that made the freedom possible. Substitute "SBC" or the name of one of the other RBOCs for "Microsoft", and you could not ask for a better statement of the problem confronting this industry, nor a better reason to continue vigilant oversight of these monopolies.

Yes, there are CLECs *ATTEMPTING* to enter the market, but this competition is truly nascent. This competition is beginning because of the actions of the FCC and the state Commissions, and perhaps most importantly, because of the promise that these Commissions would continue to hold the RBOCs to market opening conditions in the future.

However, there are many other ways that the RBOCs can exert their formidable market power, and it requires extreme diligence to make sure that the RBOCs do not kill this fledgling competition before it can leave the crib.

A perfect example of this is the practice that we have encountered here in Michigan where SBC is signing up business customers to long term contracts with excessive termination penalties.

In one example, a school district received a long-term contract that promised

discounts of around $20,000. The “kicker” was that the termination penalties were as much as $500,000 if the district wanted to switch to another provider before the term was up. It appears that, contrary to prior assertions, these excessive charges have been impeding competition. Clearly this is the type of monopolistic behavior that we must be concerned with, regardless of the application of the 96 Telecom Act. SBC acted to sign up customers to long term contracts during a time when the customers still had very limited choices for local phone service. SBC then sought to hold the customers by virtue of excessive termination penalties that dwarfed any discount the customer received or any out of pocket cost SBC might incur if the customer left before the stated term.

As noted in the case of the school district cited above, a discount of $20,000 was countered by a termination penalty of half a million dollars. This is the sort of “offer you can’t refuse” that a monopoly has to power to drive home: “Take service from me under a long term contract and get a small discount, or take service from me without a discount”. Either way, in the near term the customer has to take the service from the monopoly. Later when competitive choice does become available, the customer is locked into the term contract by a penalty that far outweighs the limited discount received.

No one but an RBOC apologist could argue with a straight face that there is too much competition in the local phone market in Michigan or any other state today.

While a fully competitive market based policy is certainly a laudable goal in the abstract, it must be remembered that for 62 years the FCC and the state Commissions undertook a monopolistic, anti-competitive, highly regulatory national policy framework which has resulted in the establishment of four of the largest, most pervasive, most entrenched monopolies in the history of the United States economy.

It was against the law to compete with these phone monopolies. And I mean against the law in terms of people could be fined or go to jail if they defied regulators and tried to offer competitive phone service. You don't cut through that type of Gordian Knot in one stroke.

To even pretend that CLECs compete in an open competitive market is to ignore reality. The FCC's own report on the state of competition shows, despite the various attempts at spin, a rather grim picture.

The Telecommunications Act of 1996 spawned dozens of would be competitors, including companies backed by such well established capital as Paul Allen, cofounder of Microsoft, (RCN) and the Kiewit Sons Construction conglomerate and Warren Buffet (Level 3) as well as some of the largest non-ILEC companies in the telecommunications industry. Despite the efforts of these competitors, and despite what are purported to be the earnest efforts of the FCC, the United States Justice Department and all 50 state Commissions, the entrenched monopolists have

surrendered just 11% market share in 6 years since the passage of the Telecommunications Act of 1996.

This must be contrasted with what has happened in the long distance market related to 271 approval. In Texas, SWBT gained over 2 million long distance customers in less than 6 months after 271 approval.

Meanwhile, the efforts of 25 CLECs have resulted in just over 2.1 million lines being served by CLECs in the territories of all 15 Texas ILECs, in nearly 6 years since the passage of the Telecommunications Act.

Put another way, SWBT took a 14.5% market share of Texas long distance customers in less than 6 months, while all 25 CLECs together managed just 16% market share of Texas local customers after 6 years. Likewise, the largest long distance carrier in New York is now Verizon, with a larger share of the long distance market than AT&T. In fact Verizon is now the fourth largest long distance company in the nation.

This brings us back to where we started, the assertion by RBOCs that since CLECs still exist, there must be real competition, and thus the RBOCs ask for reduced regulation and claim they no longer exercise monopoly market power.

The question this committee must ask in response to RBOC arguments about commercial volumes of competition is: "What would the CLEC market share be if the RBOCs did not engage in anti-competitive behavior?" "What would this

industry be like if a CLEC could gain a local customer as easily and seamlessly as an RBOC can gain a long distance customer?"

To do otherwise puts the CLECs in an untenable position. If, despite the significant obstacles thrown up by the RBOCs, CLECs are able to gain a foothold in the market, the RBOCs asks us to accept this as proof that the obstacles did not exist. Yet CLECs should not be forced to allow themselves to be driven out of business just to avoid waiving the argument that the RBOC is trying to put them out of business.

Put more colloquially, the fact that CLECs were able to stay alive after the anti-competitive assault might mean that RBOCs are not guilty of the murder of the CLEC industry, but it is surely no defense to the charge of *attempted* murder.

Thank you.